

AMENDED IN ASSEMBLY MAY 19, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 655**

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**Introduced by Assembly Member Emmerson**

February 25, 2009

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An act to amend Sections 21702.5, 21705, 21707, 21708, ~~21709, and 21713.5~~ and 21709 of, and to repeal Sections 21706 and 21710 of, the Business and Professions Code, relating to self-service storage facilities.

### LEGISLATIVE COUNSEL'S DIGEST

AB 655, as amended, Emmerson. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if an owner sends an occupant a preliminary lien notice by certified mail, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property to safe keeping. However, if the owner sends the preliminary lien notice by first-class mail with certificate of mailing, the owner may not remove the property for at least 14 days following the effective date of the lien. Existing law requires owners to send occupants a notice of lien sale stating that the property will be sold to satisfy the lien after a date not less than 14 days following the date of mailing unless the amount of the lien is paid or the occupant returns a declaration in opposition to lien sale in a specified form. Existing law specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to lien sale. Existing law requires that a lien

sale be advertised in a newspaper of general circulation in the judicial district where the sale is to be held, or posted in conspicuous places in the neighborhood of the proposed sale, as specified, and provides that prior to a lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and reasonable expenses incurred for particular actions taken. ~~Existing law provides that an owner may assess a reasonable late payment fee if an occupant does not pay the entire amount of the rental fee, as specified based upon the amount of the rent.~~

This bill would provide that, if the occupant has not paid the full amount specified by the date in the preliminary lien notice, the lien will attach as of that date and the owner may deny the occupant access to the space, enter the space, and remove any property to safe keeping. The bill would require the owner to send the occupant a notice of lien sale stating that: the property will be sold to satisfy the lien after a specified date that is not less than 21 days from the date of mailing; the occupant may regain full use of the space by paying the full lien amount prior to the specified date; the occupant may challenge the lien sale by filing an action in a court having jurisdiction as specified; and other information, as specified. The bill would eliminate the occupant's right to return a declaration in opposition to lien sale. The bill would provide that prior to any lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance, in which case the owner would retain the property pending a court order directing the disposition of the property. The bill would also prescribe procedures to be followed if a court order is not obtained. ~~The bill would provide that an owner may assess a late fee equal to the greater of \$20 or 20% of the monthly rent, and may recover reasonable expenses incurred in collecting rent and enforcing a lien.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 21702.5 of the Business and Professions
- 2 Code is amended to read:
- 3 21702.5. (a) Any lien on a vehicle or vessel subject to
- 4 registration or identification under the Vehicle Code which has
- 5 attached and is set forth in the documents of title to the vehicle or

1 vessel shall have priority over any lien created pursuant to this  
2 chapter.

3 (b) Any lien created pursuant to this chapter on a vehicle or  
4 vessel subject to registration or identification under the Vehicle  
5 Code shall be enforced in accordance with the provisions of Section  
6 3071 of the Civil Code, in the case of a vehicle, or Section 503 of  
7 the Harbors and Navigation Code, in the case of a vessel, and not  
8 as prescribed in Sections 21705 to 21711, inclusive.

9 (c) Any lien created pursuant to this chapter on a vehicle or  
10 vessel subject to registration or identification under the Vehicle  
11 Code shall not include any charges for rent, labor, or other services  
12 incurred pursuant to the rental agreement, accruing more than 60  
13 days after the date the lien imposed pursuant to this chapter  
14 attaches, as set forth in Section 21705, and before application is  
15 made for authorization to conduct the lien sale pursuant to the  
16 requirements of Section 3071 of the Civil Code or Section 503 of  
17 the Harbors and Navigation Code.

18 (d) Any proceeds from a lien sale shall be disposed of pursuant  
19 to Section 3073 of the Civil Code, in the case of a vehicle, or  
20 Section 507.5 of the Harbors and Navigation Code, in the case of  
21 a vessel.

22 SEC. 2. Section 21705 of the Business and Professions Code  
23 is amended to read:

24 21705. (a) If the notice has been sent as required by Section  
25 21703 and the total sum due has not been paid within 14 days of  
26 the termination date specified in the preliminary lien notice, the  
27 lien imposed by this chapter attaches as of that date and the owner  
28 may do all of the following:

- 29 (1) Deny an occupant access to the space.  
30 (2) Enter the space.  
31 (3) Remove any property found therein to a place of safe  
32 keeping.

33 (b) Upon taking the actions described in subdivision (a), the  
34 owner shall send to the occupant a notice of lien sale, addressed  
35 to the occupant's last known address, and to the alternative address  
36 specified in subdivision (b) of Section 21712, by certified mail or  
37 by first-class mail, if the owner obtains a certificate of mailing,  
38 postage ~~prepaid~~,

39 ~~that~~ *prepaid*, that states all of the following:

1 (1) That the occupant's right to use the storage space has  
2 terminated and that the occupant no longer has access to the stored  
3 property.

4 (2) That the stored property is subject to a lien, the current  
5 amount of the lien, and that the lien will continue to increase if  
6 rent is not paid.

7 (3) That the property will be sold to satisfy the lien after a  
8 specified date that is not less than 21 days from the date of mailing  
9 the notice.

10 (4) A statement that the occupant may regain full use of the  
11 space by paying the full lien amount prior to the date specified in  
12 paragraph (3).

13 (5) A conspicuous statement that the occupant may challenge  
14 the sale by filing an action in any court having jurisdiction to render  
15 a judgment in the amount of the lien.

16 (6) That any excess proceeds of the sale over the lien amount  
17 and costs of sale will be retained by the owner and may be  
18 reclaimed by the occupant or claimed by another person at any  
19 time for a period of one year from the sale and that thereafter the  
20 proceeds will escheat to the county in which the sale is to take  
21 place.

22 SEC. 3. Section 21706 of the Business and Professions Code  
23 is repealed.

24 SEC. 4. Section 21707 of the Business and Professions Code  
25 is amended to read:

26 21707. After the expiration of the time given in the notice of  
27 lien sale, pursuant to subdivision (b) of Section ~~21705~~,

28 ~~or 21705~~, or following the failure of a claimant to pay rent or  
29 obtain a court order pursuant to Section 21709, an advertisement  
30 of the sale shall be published once a week for two weeks  
31 consecutively in a newspaper of general circulation published in  
32 the judicial district where the sale is to be held. The advertisement  
33 shall include a general description of the goods, the name of the  
34 person on whose account they are being stored, ~~the space number~~  
35 ~~of the occupant~~, and the name and location of the storage facility.  
36 If there is no newspaper of general circulation published in the  
37 judicial district where the sale is to be held, the advertisement shall  
38 be posted at least 10 days before the sale in not less than six  
39 conspicuous places in the neighborhood of the proposed sale. The  
40 sale shall be conducted in a commercially reasonable manner.

1 After deducting the amount of the lien and costs of sale, the owner  
2 shall retain any excess proceeds of the sale on the occupant's  
3 behalf. The occupant, or any other person having a court order or  
4 other judicial process against the property, may claim the excess  
5 proceeds, or a portion thereof sufficient to satisfy the particular  
6 claim, at any time within one year of the date of sale. Thereafter,  
7 the owner shall pay any remaining excess proceeds to the treasury  
8 of the county in which the sale was held.

9 SEC. 5. Section 21708 of the Business and Professions Code  
10 is amended to read:

11 21708. Any person who has a perfected security interest under  
12 Division 9 (commencing with Section 9101) of the Commercial  
13 Code may claim any personal property subject to the security  
14 interest and subject to a lien pursuant to this chapter by paying the  
15 total amount due, as specified in the preliminary lien notice, for  
16 the storage of the property. Upon payment of the total amount due,  
17 the owner shall deliver possession of the particular property subject  
18 to the security interest to the person who paid the total amount  
19 due. The owner shall not be liable to any person for any action  
20 taken pursuant to this section if the owner has fully complied with  
21 the requirements of Sections 21704 and 21705.

22 SEC. 6. Section 21709 of the Business and Professions Code  
23 is amended to read:

24 21709. Prior to any sale pursuant to Section 21707, any person  
25 claiming a right to the goods may pay the amount necessary to  
26 satisfy the lien together with one month's rent in advance. In that  
27 event, the goods shall not be sold, but shall be retained by the  
28 owner pending a court order directing the disposition of the  
29 property. If a court order is not obtained within 30 days following  
30 the date of the payment pursuant to this section, the claimant shall  
31 pay the owner the monthly rental charge for the space where the  
32 property is stored pursuant to the terms of the rental agreement. If  
33 the claimant does not pay this rent, the owner may sell or dispose  
34 of the personal property in accordance with Section 21707. The  
35 owner shall have no liability for the sale or other disposition of  
36 the personal property to any claimant who fails to secure a court  
37 order or pay the required rental charge as provided in this section.

38 SEC. 7. Section 21710 of the Business and Professions Code  
39 is repealed.

1     ~~SEC. 8. Section 21713.5 of the Business and Professions Code~~  
2     ~~is amended to read:~~

3     ~~21713.5. (a) The owner of a self-service storage facility may~~  
4     ~~assess a late payment fee if an occupant does not pay the entire~~  
5     ~~amount of the rental fee specified in the rental agreement, subject~~  
6     ~~to the following requirements:~~

7     ~~(1) No late payment fee shall be assessed unless the rental fee~~  
8     ~~remains unpaid for at least 10 days after the date specified in the~~  
9     ~~rental agreement for payment of the rental fee.~~

10    ~~(2) The amount of the late payment fee shall be specified in the~~  
11    ~~occupant's rental agreement.~~

12    ~~(3) Only one late payment fee shall be assessed for each rental~~  
13    ~~fee payment that is not paid on the date specified in the rental~~  
14    ~~agreement.~~

15    ~~(4) The late payment shall not exceed the greater of twenty~~  
16    ~~dollars (\$20) or 20 percent of the monthly rent.~~

17    ~~(b) An owner may recover from the occupant any reasonable~~  
18    ~~expenses incurred in collecting rent and enforcing a lien created~~  
19    ~~pursuant to this chapter.~~